COMMERCIAL LAW—

I. INSURANCE LAW

An insured seeking recovery on a policy of insurance has the burden of proving a loss of which a peril insured against was the proximate, not the remote, cause.[1] That is not enough however. He must likewise show that such loss falls within the terms of the policy [2] which constitute the measure of the insurer's liability.[3] To accomplish the latter task, the policy should be produced when available, being the best evidence obtainable, and if lost, its loss should be accounted for.[4] The case of *Macondray & Co., Inc. v. The Connecticut Fire Insurance Company* [5] is instructive.

In that case, plaintiff-appellant sought to recover on a contract of insurance over a certain cargo consigned to it from New York to Manila and lost or damaged to its prejudice. To establish its case, plaintiff-appellant introduced in evidence a certificate of insurance which did not embody all the terms and conditions of the contract, and was subject to all the terms of a certain open policy therein mentioned, which open policy, however, was not presented in evidence. As to the cause of the loss or damage, the only witness could not say whether the damage was due to insufficient packing or to any definite cause. Under these circumstances, the Supreme Court held:

> "As the cause of the loss or damage was not established by the appellant and a copy of the open policy was not presented in evidence, to show whether said loss or damage is recoverable from the appellee under the contract of insurance, the appellant's claim cannot prosper."

II. NEGOTIABLE INSTRUMENTS LAW

Certain bills of exchange are required by law to be presented for acceptance.[6] Such presentment, as a general rule, must be made within a reasonable time, otherwise the drawer and all indorsers are discharged.[7] For determining what constitutes a reasonable time within which to present a bill for acceptance, no definite rule has been as yet laid down, or indeed can be laid down to govern all cases.[8] The question depends on the circumstances of each partic-

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[1] 8 COUCH, G. J., CYCLOPEDIA IN INSURANCE LAW (1931), pp. 72-62-7263, Section 2233; Section 77, Act No. 2427, as amended.

[2] COUCH, *op. cit.*, Section 2233, pp. 7262-7263.

[3] *Young v. Midland Textile Ins. Co.* (1915), 30 Phil. 617, as cited by II TOLENTINO' COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES (1952) (7th Ed), p. 942.

[4] COUCH, *op. cit.*, Section 2176, pp. 7035-7036.

[5] G. R. No. L-5184, prom. May 29, 1953.

[6] Section 143, Act No. 2031.

[7] Section 144, Act No. 2031.

[8] STORY, J., in a case before the U.S. Circuit Court, *Wallace v. Agry*, 4 Mason 336, as cited by 2 DANIEL, J. W., A TREATISE ON THE LAW ON NEGOTIABLE INSTRUMENTS (1933) (7th Ed) p. 592.

ular case,[9] and regard is to be had of the nature of the instrument, the usage of trade or business, if any, with respect to such instruments, and the facts.[10] In *N. O. Behn, Meyer & Co. v. Hongkong & Shanghai Banking Corporation*,[11] the Supreme Court found that "there was an unreasonable delay in the delivery of the bill of exchange to the drawee for acceptance," one month and five days having been allowed to elapse without valid excuse, from the date the holder's agent received the bill for transmission to the drawee to the date the same was actually delivered to the latter.

One of the circumstances which may affect the question of reasonable time is the facility of communication between the parties.[12] In the above-mentioned case, notwithstanding the declaration of war between England and Germany, the airmail and steamer services between New York, where the holder's agent was, and Amsterdam, the place of acceptance, were then in operation.[13]

Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be protested for nonacceptance. Failure to do so discharges the drawer and indorsers.[14] This provision of law furnished an additional reason why the holder in the *Behn, Meyer* case was held to have no recourse against the drawer, the former having failed to make the necessary protest after the drawee had refused acceptance.

III. Warehouse Receipts Law

In the recent case of *Martinez v. Philippine National Bank*,[15] the estate of Pedro Martinez indorsed and delivered to the Philippine National Bank quedans issued by the Bogo-Medellin Milling Co., covering a certain quantity of sugar belonging to the estate, as security for the payment of a crop loan. While the obligation was yet outstanding and the quedans were still in the possession of the indorsee-pledgee, the sugar covered by the quedans were lost while stored in the warehouse which issued the quedans. Suit was thereafter brought wherein the issue raised was whether the indorsement and delivery of the quedans transferred the ownership of the sugar to the defendant bank. If it did, the bank should suffer the loss; but if it did not, the loss should be for the account of the estate. Upon these facts, the majority of the Supreme Court held:

> "Where a warehouse receipt or quedan is transferred or endorsed to a creditor only to secure the payment of a loan or debt, the transferee or endorsee does not automatically become owner of the goods covered by the warehouse receipt or quedan but he merely retains the right to keep and with the consent of the owner to sell them so as to satisfy the

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[9] *Ibid.*
[10] Section 193, Act No. 2031.
[11] G. R. No. L-5537, prom. May 29, 1953.
[12] Daniel, *op. cit.*, note 8, pp. 600-601.
[13] *Supra*, note 11.
[14] Section 152, Act No. 2031.
[15] G. R. No. L-4080, prom. September 21, 1953.

> obligation from the proceeds of the sale, this for the simple reason that the transaction involved is not a sale but only a mortgage or pledge, and * * * if the property covered by the quedans of warehouse receipts is lost without the fault or negligence of the mortgagee or pledgee or the transferee or endorsee of the warehouse receipt or quedan, then said goods are to be regarded as lost on account of the real owner, mortgagor or pledgor."

From this ruling, two justices dissented.[16] Chief Justice Paras would rather apply section 41 of the Warehouse Receipts Act [17] wherein a person to whom a negotiable receipt, such as the sugar quedans in question, has been duly negotiated acquires title to the goods covered by the receipt, as well as the possession of the goods, through the warehouseman, as if the latter had contracted directly with him. According to this opinion, under the cited section the fact that the warehouse receipts are indorsed and delivered as a security for the payment of an indebtedness does not prevent the creditor from acquiring the ownership, since the only effect of the transfer is that the debtor can reacquire said ownership upon payment of his obligation. Applied to the present case, the defendant bank to whom the two quedans have been indorsed and delivered, thereby acquired the ownership of the sugar covered by said quedans, with the logical result that the loss of the article should be borne by the defendant bank. For support, the Chief Justice cited four earlier cases,[18] in one of which, for example, it was held:

> "As to the property described in the quedans or warehouse receipts, which were pledged, as collateral, in January, 1919, to secure the eight respective promissory notes, both the title and the possession of that property were delivered to and vested in the defendant bank in January, 1919." [19]

The majority, on the other hand, entertained the view that the authorities cited by the minority were not directly applicable. From an examination of the cases cited, including the present one, it may be broadly stated that they have a thing in common: quedans or warehouse receipts were indorsed and delivered as security for the

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[16] Chief Justice Paras and Justice Pablo.

[17] Act No. 2137.

[18] *Siy Cong Bieng & Co., Inc. v. Hongkong & Shanghai Banking Corporation*, (1932), 56 Phil. 598; *Philippine Trust Co. v. Philippine National Bank* (1921), 42 Phil. 413; *Bank of the Philippine Islands v. Herridge* (1924), 47 Phil. 57; and *Roman v. Asia Banking Corporation* (1922), 46 Phil. 705.

[19] *Philippine Trust Co. v. Philippine National Bank, supra*, note 18; "The 'negotiable receipts were pledged by Otto Ranft to the defendant Hongkong & Shanghai Banking Corporation to secure payment of his preexisting debts to the latter,' and taking into consideration that the quedans were negotiable in form and duly endorsed in blank by the plaintiff and by Otto Ranft, it follows that on the delivery of the quedans to the bank they were no longer the property of the indorser unless he liquidated his debt with the bank." (*Siy Cong Bieng & Co., Inc. v. Hongkong & Shanghai Banking Corporation, supra*, note 18).

payment of debt or loan. But whereas the action in the present case was directly between the indorser-pledgor and indorsee-pledgee, with no rights of third persons being involved, the controversies in the other cases were between indorsees-pledgees and persons who were strangers to the negotiation of the receipts.[20] In explaining why the earlier cases were not directly applicable, the majority said:

> "In those cases this Court held that for purposes of facilitating commercial transaction the indorsee or transferee of a warehouse receipt or quedan should be regarded as the owner of the goods covered by it. In other words, as regards the indorser or transferor, even if he were the owner of the goods, he may not take possession and dispose of the goods without the consent of the indorsee or transferee of the quedan or warehouse receipt; that in some cases the indorsee of a quedan may sell the goods and apply the proceeds of the sale to the payment of the debt; and as regards third persons, the holder of a warehouse receipt or quedan is considered the owner of the goods covered by it."

Under the above decision, therefore, it may be stated that the rule which considers the indorsee-pledgee of a warehouse receipt the owner of the goods covered thereby, is still good law. Its continued observance is still required whenever necessary for the protection of the rights of innocent third persons. But where the protagonists are only indorser and indorsee, and no rights of third persons are imperiled, the vitality of the rule cannot hold sway under the time-honored rule, "ratione cessant, cessat ipsa lex."

IV. Trade-Marks, Trade-Names, and Unfair Competition

The freedom to select a trade-mark or trade-name is restricted by law.[21] One, for instance, may not register for that purpose a term which is "primarily geographically descriptive" or "primarily merely

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[20] In the case of *Siy Cong Bieng & Co., Inc. v. Hongkong Shianghai Banking Corporation*, supra, note 18, the third party to the indorsement and delivery of the quedans to the defendant bank was the plaintiff who was the original owner of the quedans; in *Philippine Trust Co. v. Philippine National Bank*, supra, note 18, the receipts involved were indorsed to the defendant bank, the third parties to which indorsement and delivery were the creditors of the indorser, who were represented by the latter's assignee in insolvency; in the *Bank of the Philippine Islands v. Herridge*, supra, note 18, the third parties were creditors of the insolvent indorser, the defendant herein being his assignee; and in the case of *Ramon v. Asia Banking Corporation, supra*, note 18, the third party was the vendor, plaintiff herein, of the bales of tobacco covered by the quedans involved.

It is interesting to note that the majority cited also two of the cases above-mentioned, to support its holding. They were *Philippine Trust Co. v. Philippine National Bank, supra*, note 18 and *Bank of the Philippine Islands v. Herridge, supra*, note 18.

[21] Derenberg, Trademark Protection and Unfair Trading, p. 236, as cited by I Tolentino, Commentaries and Jurisprudence on the Commercial Laws of the Philippines (1951) (6th Ed) p. 510. Although Derenberg speaks of trade-marks only, it is believed that his statement on the matter applies with equal force to trade-names.

a surname." [22] Thus, "Wellington" being either a geographical name or the surname of a person, may not be appropriated as a trade-mark or trade-name.[23] In the words of the Supreme Court,

> "* * * mere geographical names are ordinarily regarded as common property, and it is a general rule that the same can not be appropriated as the subject of an exclusive trademark or tradename. Even if Wellington were a surname, which is not even that of plaintiffs-appellants, it can not also be validly registered as a tradename."[24]

The fact, however, that a name is a geographical name does not necessarily preclude its adoption as a trade-mark or trade-name. When a geographical name is not employed in a geographical sense but is used in a fictitious sense merely to indicate ownership, independent of location, it may be a good trade-mark or trade-name.[25] Thus, the Supreme Court, in the case of *E. Spinner & Co. v. Neuss Hesslein Corp.*,[26] held:

> "* * * It is clear that in adopting the word 'Wigan' to indicate a brand of khaki, the plaintiff did not use the word 'Wigan' * * * in its geographical sense * * *. The use made by the plaintiff of the term 'Wigan' is therefore arbitrary and artificial, in that it departs from any previously accepted sense."

Likewise, no one may adopt and register as trade-mark a designation which is "merely descriptive" of the merchandise upon which it is to be used.[27] For example, a dealer in shoes cannot register as trade-mark "Leather Shoes" because that would be descriptive and it would be unjust to deprive other dealers in leather shoes of the right to use the same words with reference to their merchandise.[28] But the term "Cosmopolite", not being descriptive of the canned fish for which it is used, may be registered as trade-mark. In the words of the Supreme Court in the recent case of *Masso Hermanos v. Director of Patents*:[29]

> "The word 'Cosmopolite' does not give the name, quality, or description of the canned fish for which it is used. It does not even describe the places of origin, for it does not indicate the country or place where the

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[22] Section 4(e), Republic Act No. 166.

[23] *Ang Si Heng and Salustiana Dee v. Wellington Department Store, Inc., et al.*, G. R. No. L-4531, prom. January 10, 1953.

[24] Citing 52 Am. Jur., 548 and Section 4(e), Republic Act No. 166.

[25] *Kalchinsky v. Keller*, (1920), 193 Pac. 587, as cited by TOLENTINO, *op. cit.*, note 21, p. 513.

[26] (1930), 54 Phil. 224.

[27] Section 4(e), Republic Act No. 166; see also note 21.

[28] *Masso Hermanos v. Director of Patents*, G. R. No. L-3952, prom. December 29, 1953.

[29] *Ibid.*, This case was decided under Section 13 of Act No. 666 which provides that "* * * But no alleged trademark * * * shall be registered which is merely the name, quality or description of the merchandise upon which it is to be used."

canned fish was manufactured. It is a very general term which does not give the kind or quality of the goods."

Under the law on trade-marks [30] any person entitled to the exclusive use of a registered trade-mark or trade-name may recover damages for infringement, and upon proper showing, may also obtain injunction for the protection of his right. Before he can avail of this provision, however, the term adopted as a trade-mark or trade-name must be appropriable as such [31]—the trade-mark or trade-name infringed should be a registered one to the exclusive use of which he is entitled.[32]

"As the term cannot be appropriated as a trademark or tradename, no action for violation thereof can be maintained, as none is granted by the statute in such cases. The right to damages and for an injunction for infringement of a trademark or a tradename is granted only to those entitled to the exclusive use of a registered trademark or tradename." [33]

The law also seeks to prevent unfair competition.[34] The reason is that a person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a mark or trade-name is employed, has a property right in the goodwill of the goods, business or services so identified.[35] Like any other property right, goodwill is protected against invasion.[36]

As to what will constitute unfair competition, no inflexible rule can be laid down, each case being, in a measure, a law unto itself.[37] Guides, however, have been formulated to aid the courts. Thus, it has been said that to determine whether a person is liable for unfair competition, all the surrounding circumstances must be taken into account, especially the identity or similarity of names, the identity or similarity of the business involved, how far the names are true description of the kind and quality of the articles manufactured or the business carried on, the extent of the confusion which may be created or produced, the distance between the place of business of one and the other, and the like.[38] In the consideration of these circumstances, it has been stated also that the universal test question is whether the public is likely to be deceived.[39] In the case of *Ang Si Heng and Salustiana Dee v. Wellington Department Store, Inc.*,[40] the Supreme Court had occasion to apply the above guides.

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[30] Rep. Act No. 166, Sec. 23.
[31] *Supra*, note 23.
[32] *Ogura v. Chua, et al.* (1934), 59 Phil. 471; TOLENTINO, *op. cit.*, note 21, p. 526.
[33] *Supra*, note 23; citing Section 23, Rep. Act No. 166.
[34] *Supra*, note 23; *Alhambra Cigar, Etc. Co. v. Mojica* (1914), 27 Phil. 266, 271.
[35] Section 29, Rep. Act No. 166.
[36] *Alhambra Cigar, Etc. Co. v. Mojica, supra*, note 34.
[37] *Ibid.*
[38] *Supra*, note 23.
[39] *Supra*, note 34.
[40] *Supra*, note 23.

V. PUBLIC SERVICE LAW

1. *What Constitutes Public Service*

The Public Service Law defines the term "public service." [41] Under this law as originally enacted, it was held that to constitute public service, the service offered must be for public use. The essential feature of a public use is that it is confined not to privileged individuals only, but is open to the indefinite public. The use is public if all persons have the right to the use under the same circumstances. The criterion adopted in judging the character of the use was whether the public may enjoy it by right or only by permission. If there is, in general, a right which the law compels the owner to give the general public, then there is what is called "public service." [42]

An amendatory Act,[43] however, broadened the idea of public use by employing the words "with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes." [44] Under this amendment, it is not necessary that one holds himself out as serving or willing to serve the indefinite public in order to be considered public service.[45] It is sufficient that the service be offered or rendered for compensation to the indefinite patrons or members of a limited clientele.[46] In the words of the Supreme Court in a recently decided case:[47]

> "Commonwealth Act No. 146 (as amended by Commonwealth Act No. 454) declares in unequivocal language that an enterprise of any of the kinds therein enumerated is a public service if conducted for hire or compensation even if the operator deals only with a portion of the public or limited clientele." [48]

In the determination of what constitutes public service, casual or incidental service devoid of public character and interest, is to be excluded.[49] It is impossible, however, to lay down any general rule on the subject of whether the rendering of incidental service to members of the public by an individual or corporation whose principal business is of a different nature constitutes such person a public utili-

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[41] Section 13(b) of Commonwealth Act No. 146, as amended.

[42] *U.S. v. Tan Piaco* (1920), 40 Phil. 853; *Iloilo Ice and Cold Storage Co. v. Public Utility Board* (1923), 44 Phil. 551; II TOLENTINO, *op. cit.*, note 3, p. 468.

[43] Com. Act No. 454.

[44] TOLENTINO, *op. cit.*, note 3, p. 468; see Section 13(b), Commonwealth Act No. 146, as amended.

[45] TOLENTINO, *op. cit.*, note 42, p. 468; *Luzon Stevedoring Co., Inc., v. Public Service Commission*, G. R. No. L-5458, prom. September 16, 1953; *Luzon Brokerage Co. v. Public Service Commission* (1940), 40 O. G. (7th Sup), p. 271.

[46] *Ibid.*

[47] *Luzon Stevedoring Co., Inc. v. Public Service Commission, supra*, note 45.

[48] "Act 454 is clear and explicit when it included any vehicle rendering service for a fixed compensation as embraced within the concept of public service, although such motor vehicle is serving only a limited clientele." (*Luzon Brokerage Co. v. Public Service Commission, supra*, note 45).

[49] *Luzon Stevedoring Co., Inc. v. Public Service Commission, supra*, note 45.

ty. The demarcation line is not susceptible of exact description or definition, each case being governed by circumstances peculiar to it, the question involved depending on such factors as the extent of service, whether such person or company has held himself or itself out as ready to serve the public or a portion of the public generally, or in other ways conducted himself or itself as a public utility.[50] On the other hand, public utility is not determined by the number of people actually served. Neither does the mere fact that service is rendered only under contract prevent a company from being a public utility.[51]

In the case of *Luzon Stevedoring Co., Inc. v. Public Service Commission*,[52] the Supreme Court said:

> "The transportation service which was the subject of the complaint was not casual or incidental. It has been carried on regularly for years at almost uniform rates of charges. Although the number of petitioners' customers was limited, the value of the goods transported was not inconsiderable. Petitioners did not have the same customers all the time embraced in the complaint, and there was no reason to believe that they would not accept, and there was nothing to prevent them from accepting, new customers that might be willing to avail of their service to the extent of their capacity."

2. *Purpose of the Public Service Law*

As has been observed, public service includes not only that which is open to the indefinite public,[53] but likewise that which is offered to a limited clientele as well.[54] The main reason for bringing under the jurisdiction of the Public Service Commission motor vehicles, other means of transportation, ice plants, etc., which cater to a limited portion of the public under private agreements, is to protect the public against poor, inefficient and inadequate service and unreasonable charges,[55] and to prevent ruinous competition.[56] To the extent that such private agreements may tend to wreck or impair the financial stability and efficiency of public utilities who do offer service to the public in general, they are affected with public interest and fall within the police power of the state to regulate.[57] A public utility, there-

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[50] *Ibid*, citing 43 Am. Jur. 573.

[51] *Ibid.*

[52] *Supra*, note 45.

[53] See note 42.

[54] See note 45.

[55] *Luzon Stevedoring Co., Inc. v. Public Service Commission, supra*, note 45; *Manila Yellow Taxicab Co. v. Vesnan* (1934), 59 Phil. 775, dissenting opinion; "* * * The Public Service Commission * * * was created * * * to obtain adequate service at uniform and reasonable rate * * *." (*Manila Electric Co. v. Orlanes* (1933), 57 Phil. 805).

[56] *Luzon Stevedoring Co., Inc. v. Public Service Commission, supra*, note 45; *Banaag v. Estate of Enriquez*, G. R. No. L-4266, prom. February 29, 1952.

[57] *Luzon Stevedoring Co., Inc. v. Public Service Commission, supra*, note 45; "The primary purpose of the Public Service Commission is to secure adequate, sustained service for the public at the least possible cost to protect and conserve invest-

fore, may not evade control and supervision of its operation by the government by selecting its customers under the guise of private transactions.[58]

3. *Prior Operator Rule*

Contrary to the belief that the "first operator rule has been overruled," [59] the year 1953 saw its reaffirmation. Thus, in the case of *Fernando v. Gallardo*,[60] the Supreme Court reversed the decision of the Public Service Commission granting a new bus operator certificate of public convenience over the lines of certain old operators, without giving the latter the preference to which they were entitled. To use its words:

> "Being old operators, unquestionably able and ready to increase their units the petitioners are entitled to protection and priority as against new operators."[61]

The above rule is so deeply embedded in Philippine jurisprudence that it cannot be lightly brushed aside.

4. *Protection to Emergency Operators*

Immediately after liberation, provisional permits were issued to emergency operators to meet the increasing demand for public service, which the pre-war operators could not accommodate, the latter's equipment having been destroyed during the war.[62] As a matter of simple justice, the Public Service Commission and the Government adopted a new policy of giving the post-war operators opportunity, encouragement and protection,[63] and in proper cases, of converting their provisional permits into regular permanent certificates of public convenience,[64] this with the view to the stability of their

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ments which have already been made for that purpose." (*Batangas Transportation Co. v. Orlanes* (1928), 52 Phil. 455).

[58] *Luzon Stevedoring Co., Inc. v. Public Service Commission, supra,* note 45.

[59] "The scope note in the CASE DIGEST, 1951 of the case of *Inter-provincial Autobus Co. v. Lubaton, supra,* states that the 'first operator rule has been overruled.'" (Mendoza and Samonte, *Commercial Law,* XXVII Phil. Law Journal (1952) 271).

[60] G. R. L-4860, prom. September 8, 1953.

[61] The Court then cited *Batangas Transportation C. v. Orlanes* (1928), 52 Phil. 455, 466, which enunciated the prior operator rule, thus: "So long as the first licensee keeps and performs the terms and conditions of its license and complies with the reasonable rules and regulations of the Commission and meets the reasonable demands of the public, it should have more or less a vested and preferential right over a person who seeks to acquire another and a latter license over the same route."

[62] Mendoza and Samonte, *op. cit.*, note 59, p. 271.

[63] *Interprovincial Autobus Co., Inc. v. Mabanag,* G. R. No. L-3302, prom. January 11, 1951.

[64] *Malate Taxicab and Garage Company v. Public Service Commission,* G. R. No. L-2877, prom. April 26, 1951.

operation.[65] The above rule has been applied to transportation business.[66] There is likewise authority for its application to the manufacture of ice.[67]

5. *Alteration of Established Routes*

Certificates of public convenience may be amended by the Public Service Commission whenever the facts and circumstances on the strength of which said certificates were issued have been misrepresented or materially changed.[68] An order of amendment, however, shall be issued only upon proper notice and hearing.[69] Anyone who believes that such an order affects him has a right to intervene.[70]

In the case of *Halili v. Public Service Commission and CAM Transit Co., Inc.,* [71] the Commission, upon petition of the respondent operator and without previous notice and hearing, issued an order altering a certain route originally granted in the respondent operator's certificate on the ground that said route was not in accordance with the evidence submitted in the hearing granting said certificate. The petitioner put in issue the validity of the above order. At the outset, the Supreme Court observed that the disputed act of the commission did not fall under any of the powers which may be exercised by it "upon proper notice and hearing," [72] or "without previous hearing,"[73] and consequently the question at issue must be resolved in accordance with fundamental principles of law and justice.[74] It appeared that the alteration clearly affected the right and privilege granted the petitioner in his certificate of public convenience because by the new route the respondent operator would compete with the petitioner in the transportation of certain group of passengers who, without a change in the respondent operator's line, could not ride in the latter's busses. The Supreme Court, therefore, arrived at the conclusion that the amendment without notice or hearing was not permitted by well settled maxims of law, "because due process of law guarantees notice and opportunity to be heard to persons who would be affected by the order or act contemplated."[75]

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[65] *Javellana v. Barilea,* G. R. No. L-4347, prom. January 31, 1953.

[66] *Manila Yellow Taxicab v. Public Service Commission,* G. R. No. L-2875 and G. R. No. L-3114 to 3208, prom. October 31, 1951; *Raymundo Transportation Co. v. Cervo,* G. R. No. L-3899, prom. May 21, 1952.

[67] *Supra,* note 65.

[68] Section 16(m), Commonwealth Act No. 146, as amended.

[69] *Ibid.*

[70] *Aguilar & Manila Railroad Co. v. Pasay Transportation Co.* (1934), 60 Phil. 423.

[71] G. R. No. L-5948, prom. April 29, 1953.

[72] Section 16, Commonwealth Act No. 146, as amended.

[73] Section 17, Commonwealth Act No. 146, as amended.

[74] *Halili v. Public Service Commission, supra,* note 71.

[75] *Ibid.*

A month and a half later, another case [76] came up before the Supreme Court presenting the same issue and with substantially the same facts as *Halili v. Public Service Commission and CAM Transit Co., Inc.*[77] This time the Court declared that "clerical errors in a decision may be corrected by the Commission. However, the Commission has no right to change substantially a decision as to prejudice the parties without any hearing. The change in this case works to the prejudice of petitioner. The mere fact that the decision does not conform to the evidence presented is not a justification for an amendment of the decision. Rights acquired by virtue of a decision should not be revoked under the pretext of amendment."[78]

6. *Conclusiveness of Findings of PSC*

One of the grounds upon which the Supreme Court may modify or set aside an order or decision of the Commission is where there was no evidence before the Commission to support reasonably such order or decision.[79] Under this, the Supreme Court is not required nor authorized to weigh the conflicting evidence and substitute its conclusion for that of the Commission.[80] The latter's findings of fact, when there is sufficient evidence to support them, are conclusive upon the former.[81] The only function of the Supreme Court is to determine whether or not there was evidence before the Commission upon which its order or decision might reasonably be based.[82] In the recent case of *Javellana v. Barilea,*[83] the Supreme Court once again respected and left undisturbed the finding of the Commission that "public convenience required the continuance of respondent's one-ton ice plant," there being evidence to reasonably support it.

An order or decision of the Commission may likewise be reversed or set aside when it violates the policy of protecting investments of old operators.[84] This is also true when the order or decision in question was issued without proper notice or previous hearing,[85] unless the same falls within the provisions of Section 17 of the Public Service Law, concerning "proceedings of Commission without previous hearing."

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[76] *Halili v. Public Service Commission and Heras,* G. R. No. L-5960, prom. June 17, 1953.

[77] *Supra,* note 71.

[78] See note 76, as translated by Quiason's Case Digest (1953), p. 193.

[79] Section 35, Commonwealth Act No. 146, as amended.

[80] *Ice & Cold Storage v. Valero,* G. R. No. L-1871, prom. November 18, 1949; *Ice & Cold Storage v. Isip,* G. R. No. L-2458, prom. January 28, 1950, as cited by TOLENTINO, *op. cit.,* note 42, p. 501; *Javellana v. Barilea, supra,* note 65.

[81] TOLENTINO, *op. cit.,* note 42, p. 500; Rodriguez, V. H., 1952 *Survey of Administrative Law,* XXVIII *Phil. Law Journal* (1953) 121, both citing cases.

[82] I MORAN, COMMENTS ON THE RULES OF COURT (1952 ed.) 933, citing *San Miguel Brewery v. Lapid* (1929), 53 Phil. 539.

[83] *Supra,* note 65.

[84] *Fernando v. Gallardo, supra,* note 60.

[85] *Halili v. Public Service Commission and Heras, supra,* note 74, and *Halili v. Public Service Commission and CAM Transit Co., supra,* note 71.

7. Lease of Public Service Property

Under the law, it is unlawful for the owner of a public service to sell or lease any property covered by his franchise, without the approval of the Public Service Commission.[86] The reason is that, since a franchise is personal in nature any transfer or lease thereof should be notified to the Commission so that the latter may take proper safeguards to protect the interest of the public.[87] The approval shall be given "after notice to the public and after hearing the persons interested at a public hearing." [88] It is not necessary though that personal notice be served upon the persons interested. It is enough that there be public notice, publication in a newspaper, for instance, being deemed sufficient.[89] At the public hearing, the Commission shall determine if there are good and reasonable grounds justifying the transfer or lease, or if the sale or lease is detrimental to the public interest.[90] The consideration is whether the public will be prejudiced or whether the service will fail to operate or function better for public convenience.[91] Resolving the question one way or another lies within the discretion of the Commission.[92]

The sale or lease of property covered by a franchise without the requisite approval is not binding against the Public Service Commission and in contemplation of law the grantee continues to be responsible under the franchise in relation to the Commission and to the public. The transaction, however, is valid and effective between the parties.[93] Thus, in the case of *Montoya v. Ignacio*,[94] Marcelino Ignacio, owner of the jeepney, leased the same, without the approval of the Public Service Commission, to one Leoncio Tahimik. While in the latter's possession, it collided with a bus, thereby causing the death of a passenger. The issue was: who should be held responsible, the lessor or the lessee? After discussing the necessity of obtaining the approval of the Public Service Commission of the lease, the Supreme Court said:

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[86] Section 20(g), Commonwealth Act No. 146, as amended.

[87] *Sancho Montoya v. Marcelino Ignacio*, G. R. No. L-5868, prom. December 29, 1953.

[88] *Supra*, note 86.

[89] TOLENTINO, *op. cit.*, note 3, p. 490.

[90] *Supra*, notes 86 and 87.

[91] *Aucal Autocalesas Co., Inc. v. Ablaza & de Castro* (1938), 66 Phil. 24.

[92] *Manila Electric v. Public Service Commission* (1935), 61 Phil. 441.

[93] *Supra*, note 87; Justice Reyes, concurred in by Justice Tuason, concurred and dissented: "I concur in the result, but must express my discomformity to that part of the majority opinion which holds that the sale by a public service utility or any of its property without the approval of the Public Service Commission is binding between the parties though not effective against the public. This, I believe, is a misconstruction of section 16, paragraph *h*, of the Public Service Law."

Section 16, paragraph (*h*), of Act 3108 is now Section 20, paragraph (*g*), of Commonwealth Act No. 146. (*Aucal Autocalesa Co., Inc. v. Ablaza & de Castro, supra*, note 89).

[94] Supra, note 87.

"Since the lease of the jeepney in question was made without such approval, the only conclusion that can be drawn is that Marcelino Ignacio still continues to be its operator in contemplation of law, and as such is responsible for the consequences incident to its operation, one of them being the collision under consideration."

JOSE S. BALAJADIA

CRIMINAL LAW AND PROCEDURE—

I. SERIOUS PHYSICAL INJURIES.

Under the Revised Penal Code the acts which may give rise to the crime of serious physical injuries are wounding, beating up or assaulting another [1] and administering injurious substances.[2]

In *People v. Hernandez*,[3] the Supreme Court had occasion to pass on the question of whether the loss of the power to hear with one ear is a serious physical injury. Accused was charged with physical injuries inflicted upon the person of one Amado Palor which required medical treatment and incapacitated him for a period of 25 days. According to the information, the offended party "also lost the power to hear with his right ear," as a consequence of said injuries. The lower court was of the opinion and so held that the crime charged was less serious physical injuries. From this decision, the Solicitor-General appealed, contending that the crime described was serious physical injuries.

The Supreme Court held that the loss of one ear did not imply total loss of the power to hear. Nevertheless, the Supreme Court upheld the Solicitor-General's contention that the crime committed was the offense of serious physical injuries but predicated its conclusion, not on the ground of loss of the power to hear but on the loss of the use of a non-principal part of the body.[4]

II. IGNORANCE AND LACK OF INSTRUCTION.

In *People v. Cocoy, et. al.*,[5] two brothers, Motin and Apolonio Cocoy, were charged with robbery with triple murder. Upon arraingnment the two pleaded guilty. Because of the seriousness of the offense charged and because the pair were illiterate non-Christians, the trial court ordered Motin Cocoy to take the witness stand. From Motin's testimony, the trial judge was convinced that the two did not understand the meaning and effect of their plea. They were, however, found guilty and sentenced to suffer the death penalty. The issue before the court on review was whether the penalty should be reduced, in view of the ignorance and lack of instruction of the defendants. In reducing the penalty to life imprisonment, the court held:

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[1] Article 263.
[2] Article 264.
[3] G.R. No. L-4213, prom. November 28, 1953.
[4] Art. 263, par. 3, R. P. C.
[5] G.R. No. L-6019, prom. December 15, 1953.